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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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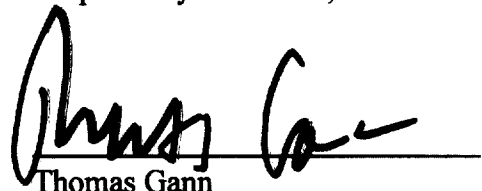
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of U S WEST Communications, Inc.) CC Docket No. 98-26
for Relief from Barriers to Deployment)
of Advanced Telecommunications Services)

MOTION OF SUN MICROSYSTEMS, INC. TO ACCEPT LATE-FILED COMMENTS

Sun Microsystems, Inc. ("Sun") respectfully moves the Commission to accept the attached comments in the above-docketed proceeding. Sun was unable to file these comments yesterday as a result of difficulties in coordinating production and filing between its East and West Coast offices. Because reply comments in this docket are not due for another month (on May 6, 1998), accepting these comments one day late will not prejudice any party to the proceeding.

Respectfully submitted,



Thomas Gann
Manager, Federal Affairs
SUN MICROSYSTEMS, INC.
1300 I Street, N.W. Suite 420 East
Washington, DC 20005
(202) 326-7520

April 7, 1998

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COMMENTS OF SUN MICROSYSTEMS, INC.

Sun Microsystems, Inc. ("Sun") files these comments in support of U S WEST's petition for relief from regulatory barriers that are hindering the carrier's investments in data backbone networks and high-speed transmission technologies such as digital subscriber lines (xDSL). Sun supports U S WEST's efforts to increase the public's access to high-bandwidth networks and advanced information services. It agrees that U S WEST should be allowed to build cell- and packet-switched networks and carry xDSL data traffic across state and LATA boundaries. Sun also agrees that the Commission should forbear from requiring U S WEST to provide its advanced data transmission and networking services to its competitors at a discount from retail prices and to unbundle the non-bottleneck facilities used to provide these services. Granting the relief requested in the petition will "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," just as Congress intended. See Telecommunications Act of 1996, § 706(a).

Sun is a leader in developing client servers, workstations, software, and microprocessors that allow people to work together in networked environments. Sun has actively promoted a vision of "enterprise network computing," in which processing capability is

distributed throughout a network and available to remote users wherever they are located. Sun's servers and Solaris system software enable users to host Internet content, maintain and secure corporate intranets and business-to-business extranets, and conduct electronic commerce. The company is the creator of Java, an open-protocol programming language that, among other things, allows users to write programs that reside on a website and can be downloaded by visitors. Sun's goal is to provide technology that ensures continuous WebTone — seamless and dependable network connectivity analogous to dialtone on the telephone network.

Individuals and corporations cannot take full advantage of the information superhighway, or work together most efficiently over long distances, until there is adequate data bandwidth available to connect them and a widespread deployment of high-speed transmission technologies. Congress recognized as much when it passed the Telecommunications Act, declaring it a national priority to ensure that "all Americans" have access "on a reasonable and timely basis" to "advanced telecommunications capability," defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunication." Act §§ 706(a), (c). In Section 706(a) of the Act, Congress gave the Commission a specific power of "regulatory forbearance" and directed it to use that power to "encourage the deployment . . . of advance telecommunications capability" and "remove barriers to infrastructure investment."^{1/}

^{1/} Section 706's grant of forbearance authority is wholly separate from the power given under Section 10 of the Act, and the two serve very different purposes. Section 10 allows the Commission to forbear from enforcing regulations whenever it finds that they are unnecessary in light of competition in the telecommunications marketplace and that forbearance would promote such competition further. See 47 U.S.C. § 160(a), (b). Since competition in the
(continued...)

It is crucial that the Commission carry out Congress's mandate expeditiously.

The current Internet is not the advanced broadband network that Congress envisioned, nor does it adequately connect "all Americans." As U S WEST demonstrated in its petition, the current Internet backbone bypasses major portions of the country, leaving smaller communities (often the ones that could benefit most from distance learning technologies and other advanced information services) with low-bandwidth connections to the Internet that are more expensive and more prone to failure. Internet congestion prevents users from seeing the benefits of high-speed data transmission technologies like xDSL and frustrates their ability to use sophisticated Web-based information services. The Nation will not achieve the full potential of the information superhighway unless carriers are strongly encouraged to deploy more bandwidth, especially in those communities that are not now adequately served.

Sun believes that the Commission should permit U S WEST to enter this market and invest in the transmission and network facilities so desperately needed. Since U S WEST plainly has the greatest investment in telecommunications infrastructure in its region, there is every reason to expect U S WEST to deploy Internet backbone to communities that are currently beyond the existing backbone's reach. Sun understands that U S WEST already has significant

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telecommunications marketplace is the touchstone of Section 10's broad mandate, forbearance under that section (and, by its words, that section alone) cannot be used to ease the requirements of 47 U.S.C. §§ 251 and 271 until those market-opening provisions are fully implemented. Id. § 160(d). Section 706, on the other hand, serves a different (and much narrower) purpose: removing regulatory barriers that are hindering carriers' investments in data infrastructure and the deployment of advanced broadband networks to "all Americans." Nothing in the text of Section 706 excludes from the reach of this forbearance power any regulatory barriers that have the described effect. Given the different purposes that Sections 10 and 706 serve, it would make no sense to import the former's textual limitations into the latter.

fiber in the ground in smaller cities throughout its service region, but is not permitted to connect these facilities together. If the Commission gave its permission — by exercising its Section 706 forbearance power to except these services from Section 271 or by creating a single, nationwide “data LATA” — U S WEST could build a backbone reaching deeper into the West and Midwest and with far greater bandwidth than any backbone now in operation. Importantly, this would be an infrastructure that would benefit the entire community of Internet users and information service providers: by alleviating Internet congestion and reducing ISPs’ backhauling expenses (which discourage them from using high-bandwidth links to the Internet), U S WEST’s backbone would enable all ISPs to offer customers more sophisticated information services.

In addition, granting U S WEST’s petition would sharpen its incentives to roll out xDSL and other high-speed data transmission technologies in its service region. It is essential that the Commission encourage as much competition in “last mile” data technologies as it possibly can. End users need high-speed data connections in order to be able to take advantage of the most advanced web-based information services, and end users’ increased demand will, in turn, drive the development of more and more sophisticated information services. Speeding the deployment of these “last mile” technologies also makes it possible for companies to adopt telecommuting solutions over corporate intranets, and to communicate with suppliers over extranets.

Sun also believes that, like any innovator in a free market, carriers that make these investments in broadband infrastructure should be permitted to realize the financial rewards of their risk-taking. Companies have no incentive to invest in research and development if they must turn every new technology over to their competitors as an unbundled element at economic

cost, and if they must make every new service available to rivals at a significant discount.

Congress drafted the unbundling and discounted resale provisions of the Telecommunications Act specifically for circuit-switched telephony. By their terms, they apply to carriers only when they act as “incumbent local exchange carriers” — that is, only when they provide “telephone exchange service.” See 47 U.S.C. §§ 251(c), (h)(1)(A). It would violate Congress’s intent and be disastrous technology policy to import these innovation-discouraging provisions from the old circuit-switched world into the fast-moving and fiercely competitive arena of advanced data services simply because some carriers operate on both sides of the fence.

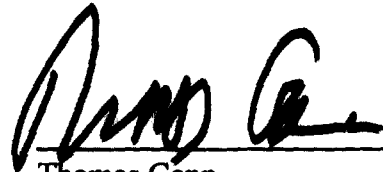
While Sun believes that allowing U S WEST to compete on equal terms in the markets for backbone and broadband would serve the public interest, it also believes that the Commission should continue to enforce the principles of nondiscrimination that have guided its actions in the past. The benefits that consumers will realize from broadband networks will be maximized only if all companies — incumbent local exchange carriers, competitive local exchange carriers, and unaffiliated information service providers — operate on a level playing field and have fair opportunities to compete. To ensure that competition in the “last mile” is a reality, for example, the Commission must ensure that CLECs will have access to digitally compatible unbundled loops and central-office collocation space. In addition, the Commission should confirm that U S WEST would be under an obligation to provide its basic service elements to independent ISPs at the same prices, terms, conditions, and levels of service and quality that it provides those elements to its affiliated ISP.

Sun notes that U S WEST’s petition appears to recognize that the carrier is under a continuing nondiscrimination obligation and must structure its advanced data networking and

transmission offerings in a way that enables all ISPs and competing carriers to take advantage of them. U S WEST's petition does not challenge the company's ONA duties to unaffiliated ISPs. Likewise, U S WEST states that it will ensure that CLECs can provide customers with competitive xDSL services using unbundled loops and collocated office space. Sun has no reason to doubt the sincerity of these commitments. Where U S WEST now offers MegaBit services, it makes xDSL host connections available to unaffiliated ISPs, and it should have the same incentives to do so in the future. The Commission should adopt appropriate safeguards to ensure that U S WEST does in fact live up to these commitments.

For the foregoing reasons, Sun recommends that the Commission grant U S WEST's petition for relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas Gann', is written over a horizontal line.

Thomas Gann
Manager, Federal Affairs
SUN MICROSYSTEMS, INC.
1300 I Street, N.W. Suite 420 East
Washington, DC 20005
(202) 326-7520

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